IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3282 OF 2005

IN

APPEAL NO.960 OF 2005

AND

APPEAL NO.960 OF 2005

IN

SUMMONS FOR JUDGMENT NO.519 OF 2003

IN

SUMMARY SUIT NO.3589 OF 2002

...

M/s.Lalit Constructions & ors. ...Appellants

v/s.

Manubhai Hargovandas Patel ...Respondent

...

Mr.S.I.Jaykar for the Appellants.

Mr.Hemant Sethi for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 1ST OCTOBER, 2007

P.C.:

1. The Appeal is not on board for final hearing. Taken up for final hearing by consent of parties.

2. The Appeal is directed the against the order dated 26th September, 2005 passed in Summons for Judgment No.519 of 2003 by the learned single Judge of this Court.

3. We have heard the learned Counsel for both sides. It is clear that there was a promissory note signed by the Defendants in favour of the Plaintiff. Defendants, however, claimed that they have paid the amount in following manner:

i) Cheque No.404765

Bank of India	22-11-1999	1,00,000/-

ii) Cheque No.405284

Bank of India	25-12-1999	10,00,000/-

and they claimed that Rs.14,00,000/- were adjusted on 31-3-2001 towards the liability of the Plaintiff under some labour contract. The Plaintiff admits receipt of Rs.1,00,000/- and Rs.10,00,000/- by cheque, but according to the Plaintiff those payments were made by the Defendants in relation to some other transactions. So far as adjustment of Rs.14,00,000/- in relation to some labour contract is concerned, the Plaintiff denies that any such adjustment was permitted. The Defendants have also not produced any document in relation to such adjustment. It, prima facie, appears that though the defence of the Defendants in relation to payment of Rs.11,00,000/- may have some substance, the Defendants do not have any defence in so far as an amount of Rs.14,00,000/- is concerned, and therefore, in our opinion, interest of justice will be served by granting conditional leave to defend to the Defendants on their depositing an amount of Rs.14,00,000/- in this court.

4. The learned Counsel appearing for the Defendants, on taking instructions from the Defendant, has stated that the Defendants will deposit the amount of Rs.14,00,000/- in this Court, if they are given sixteen weeks time. In our opinion, therefore, following order would meet the ends of justice.

O R D E R

The order impugned in the Appeal is set aside. Summons for Judgment No.519 of 2003 is disposed of in following terms:

(i) On the Defendants depositing an amount of Rs.14,00,000/- (Rupees Fourteen Lakh only), with due intimation to the Plaintiff, within a period of sixteen weeks from today in this court, leave to defend shall stand granted to the Defendants.

(ii) In that event, the Defendants shall file their written statement within a period of four weeks from the date of deposit of the amount.

(iii) On the amount being deposited, the Prothonotary

& Sr.Master shall permit the Plaintiff to withdraw the amount on furnishing a bank guarantee to the satisfaction of the Prothonotary & Sr.Master and on furnishing an undertaking to bring back the amount, if so directed by this court and on such terms and conditions as may be directed by this court, with further undertaking that in that event the rate of interest shall not be less that 12% p.a.

(iv) Withdrawal shall be permitted within a period of eight weeks from the date of deposit. If the amount is not withdrawn within the aforesaid period, then it shall be invested in fixed deposit in a nationalised bank to the credit of the suit.

(v) If the Defendants do not deposit the amount within the aforesaid period, then this Appeal shall be treated as dismissed.

Appeal & Notice of Motion No.3282 of 2005 are disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)